

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ISIDRO DE JESUS, *et al.*,

Plaintiffs,

-v-

LT & LT LLC, *et al.*,

Defendants.
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24 Civ. 9901 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On May 2, 2025, Defendant Lan Cao filed her answer to Plaintiffs’ Amended Complaint. Dkt. 27. Cao subsequently filed a motion to dismiss the Amended Complaint for insufficient service of process under Federal Rule of Civil Procedure 12(b)(5). Dkts. 28-29.

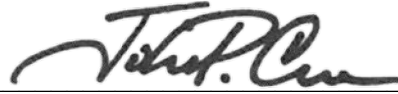
Cao’s motion is denied for two reasons. First, Cao moved without first filing a pre-motion letter in accordance with the Court’s Individual Civil Rule 6.A. *See* <https://www.nysd.uscourts.gov/hon-john-p-cronan>. Second, and more importantly for present purposes, Cao’s motion was filed after she submitted a responsive pleading to the Amended Complaint. Federal Rule of Civil Procedure 12(b) provides that “[a] motion asserting any of [Rule 12’s enumerated] defenses must be made before pleading if a responsive pleading is allowed,” and Rule 12(h) further provides that the defense of insufficient service of process is waived if not properly made under a timely Rule 12 motion or included in a responsive pleading.

Cao did not move under Rule 12(b)(5) before filing a responsive pleading. Moreover, Cao’s answer does not plead a defense of insufficient service of process. *See* Dkt. 27. This defense is waived and Cao’s motion must be denied. *See Fed. Home Loan Mortg. Corp. v. Dutch Lane Assocs.*, 775 F. Supp. 133, 136-37 (S.D.N.Y. 1991) (holding that where “no pre-answer motions,

consolidated or otherwise, were made by defendants,” the court is “compelled to hold the improper service defense waived” unless included in the answer). According, Cao’s motion to dismiss based on insufficient service is denied and the Clerk of Court is respectfully directed to close Docket Number 28.

SO ORDERED.

Dated: May 6, 2025
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", is written over a horizontal line.

JOHN P. CRONAN
United States District Judge